THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3090 of 1995

Dated 21-02-2006

Between:

G.Shanmugam, S/o.G.Govindaraju. **.. PETITIONER**

AND

The Executive Officer, T.T.D.

.. RESPONDENT

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ORDER:

The relief sought for, in this writ petition, is to direct the respondent herein to consider the case of the petitioner for the post of worker in any wing of the Tirumala Tirupathi Devasthanam ("for short "T.T.D.").

Facts, to the extent necessary, are that the petitioner was appointed as N.M.R. worker in T.T.D. canteen on 03-10-1981 and he worked till the first week of August, 1982. It is stated that the petitioner approached the respondents seeking reemployment and requested that he be appointed whenever new workers are appointed. The petitioner would contend that other N.M.R. workers, who were appointed along with him, are continued and their services were regularized on 30-10-1990 and that their names have been mentioned at Serial Nos.45 to 59, 76, 88, 91, 93, 94, 95, 99, 101 to 104, 109, 110, 117, 120, 122, 124, 126, 127, 130, 134, 136, 141, 142, 144, 165 and 223 in the NMR list. It is further contended that, without complying with the mandatory provision of Section 25-H of the Industrial Disputes Act (for short "the Act"), no new workers should be permitted to be appointed in the T.T.D.

In the counter affidavit, it is stated that the petitioner had worked from 03-10-1981 to 31-12-1981 on N.M.R. basis in the TTD canteen and again from 02-04-1982 to 30-06-1982. It is also stated that those N.M.Rs, who were appointed from 01-01-1979 to

31-03-1984, and remained in service on the date of G.O.Ms.No.296, dated 19-04-1988, were absorbed and since the petitioner did not fall within the purview of G.O.Ms.No.296, dated 19-04-1988, or G.O.Ms.No.344, dated 09-05-1988, his services could not be regularized, whereas the other persons, whose names are referred to by the petitioner, in the affidavit filed in support of the writ petition, were entitled to be absorbed under the said G.Os. and were accordingly absorbed. It is stated that no direct recruitment is being entertained except through the employment exchange and that the case of the petitioner was not considered as he was not found eligible for absorption.

Sri Krishna Murthy, learned counsel for the petitioner, would submit that since it is admitted that the petitioner has worked for a short duration as NMR and there is an employer and employee relationship between the T.T.D. and the petitioner, the petitioner would be entitled to be given preferential treatment and employment in accordance with the provisions of Section 25-H of the Industrial Disputes Act.

While the fact that the petitioner worked for a short period in the year 1981-82 is admitted by the respondent, the questions as to whether the respondent-T.T.D. is an industry, whether the petitioner is a “workman” under Section 2-S of the Industrial Disputes Act, are all disputed questions of fact to be decided by the Industrial Tribunal or Labour Court on the basis of evidence. These disputed questions of fact are, normally, not adjudicated in proceedings under Article 226 of the Constitution of India.

The writ petition fails and is accordingly dismissed. Needless to state that this order shall not disentitle the petitioner from availing such other remedies as are available to him in law. No order as to costs.

21-02-2006

Prv